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DISTRICT I

June 11, 2024

To:

Hon. Christopher R. Foley
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Appeals Processing Division
Electronic Notice

Timothy L. Baldwin
Electronic Notice

Alexander Carson
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2022AP1767 City of Milwaukee v. Mohammad A. Choudry
(L.C. # 2016CV8057)

Before White, C.J., Geenen and Colón, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Mohammad A. Choudry and four LLCs—PAK Rentals & Construction LLC, PAK Property 1 LLC, PAK Property 2 LLC, and PAK Property 3 LLC—appeal an order requiring them to pay delinquent property taxes to the City of Milwaukee. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See*

WIS. STAT. RULE 809.21 (2021-22).[1] Because the appellants forfeited the issues raised on appeal, we summarily affirm.

The City filed suit against Choudry and the four LLCs in October 2016, stating various claims aimed at enjoining Choudry's business practices and collecting delinquent property taxes. After many years of litigation, including a prior appeal, the circuit court granted the City's motion for summary judgment.[2] The judgment declared Choudry the owner of certain properties titled in another name, deemed his properties a public nuisance, found that he exercised improper control over the LLCs in order to perpetuate a fraud, and pierced the corporate veil to render him personally liable for all outstanding debts and liabilities of the LLCs.[3] Following additional proceedings, the circuit court entered a final order in September 2022, awarding the City $2,204,145.12 for delinquent real estate tax on properties that Choudry formerly owned but that were sold by the court-appointed receiver during the pendency of the litigation; and $303,860.18 for delinquent real estate tax on unsold properties. Choudry appeals.

Choudry argues on appeal that the City violated his due process rights by allegedly: (1) commencing litigation for delinquent property taxes without providing written notice of the City's decision to bring an "*in personam* action against [Choudry] pursuant to WIS. STAT. § 74.53 and M[ilwaukee] C[ounty] O[rdinance] § 6.07"; and (2) filing suit without first complying with the procedures "in WIS. STAT. § 74.59 and M[ilwaukee] C[ounty] O[rdinance]

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

[2] The City moved for summary judgment as to four of its claims. After the circuit court granted that motion, the parties stipulated to dismissal of the City's remaining claims.

[3] We refer to the appellants collectively as Choudry throughout the remainder of this opinion.

§ 6.07(3), of providing notice of issuance of tax certificates associated with each property and notice of the outstanding tax balance ... and an opportunity to satisfy and/or challenge payments." The City responds that we should reject those claims because they were not raised in the circuit court, and therefore were not preserved for appeal.

This court normally does not consider issues raised for the first time on appeal. ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727. We refer to this as the "forfeiture rule." *Cf.* ***id.***, ¶11 & n.2.[4] We rarely disregard the rule "because doing so undermines judicial economy and creates an incentive for parties to build in error in order to have an adverse outcome ... overturned on appeal." ***Greene v. Hahn***, 2004 WI App 214, ¶21, 277 Wis. 2d 473, 689 N.W.2d 657. Accordingly, the forfeiture rule "is not merely a technicality or a rule of convenience; it is an essential principle of the orderly administration of justice." ***Huebner***, 235 Wis. 2d 486, ¶11. A party seeking to raise a claim on appeal therefore has the burden to show that the party first raised the claim in the circuit court. ***Id.***, ¶10.

Choudry fails to carry his burden to show that he preserved his current due process claims in the circuit court. In an apparent effort to make the necessary showing, Choudry's opening brief directed our attention to two circuit court hearings where his counsel argued that Choudry did not receive notice of contemplated litigation and an opportunity to pay or dispute the claimed tax amounts. We agree with the City that those vague assertions were insufficient to preserve

[4] Wisconsin courts at one time referred to the "waiver rule" rather than the "forfeiture rule" when analyzing a party's failure to preserve an issue. ***State v. Huebner***, 2000 WI 59, ¶11 & n.2, 235 Wis. 2d 486, 611 N.W.2d 727. "Forfeiture," not "waiver," is now recognized as the correct word for describing circumstances where a party failed to assert a claimed right. ***State v. Mercado***, 2021 WI 2, ¶35 & n.9, 395 Wis. 2d 296, 953 N.W.2d 337.

Choudry's claims that the City violated his due process rights by failing to give notice of intent to pursue an *in personam* property tax action or to issue timely tax certificates under WIS. STAT. § 74.53, WIS. STAT. § 74.59, MILWAUKEE COUNTY ORDINANCE § 6.07, or any other municipal ordinance.[5] A party must raise an issue with sufficient prominence as to alert the circuit court to the grounds alleged for relief and the ruling that the party seeks. ***Bishop v. City of Burlington***, 2001 WI App 154, ¶8, 246 Wis. 2d 879, 631 N.W.2d 656.

Choudry stated in his reply brief that, in light of the City's arguments regarding forfeiture, he would "point to the exact arguments in the factual record" showing that he raised his claims first in the circuit court. If Choudry's reply brief had in fact pointed us to places in the circuit court record where he raised the "exact" due process arguments that he raises now, his efforts would have come too late. We do not consider issues or arguments presented for the first time in an appellant's reply brief because the respondent has not had the opportunity to address them. ***Dane Cnty. DHS v. J.R.***, 2020 WI App 5, ¶40, 390 Wis. 2d 326, 938 N.W.2d 614. Here, however, Choudry's reply brief failed to show that he raised his current claims in the circuit court. Indeed, Choudry conceded in that brief that he "never explicitly cited the exact Milwaukee Code of Ordinances" or the statutory language that he relies on in this court. Instead, he directed us to his circuit court arguments that "[t]he relevant statutory due process rights are related to tax and lien foreclosures pursuant to WIS. STAT. [ch.] 846," and to his citations in circuit court to "2017 Wis.

[5] The City asserted in its respondent's brief that Choudry never raised an argument in circuit court regarding MILWAUKEE COUNTY, WIS. ORDINANCE § 6.07, and that such an argument would have failed because the City is not bound by county ordinances. The City added that it has codified *in personam* notice procedures in MILWAUKEE, WIS. ORDINANCE § 304-48-3, but that Choudry never presented an argument in circuit court related to that ordinance either. Choudry's reply brief did not dispute that the county ordinance he cited on appeal is inapplicable to the instant litigation, and he acknowledged that he "never explicitly cited" either the county ordinance or the city ordinance in the circuit court proceedings.

Act 339" (which created certain provisions in ch. 846). Accordingly, Choudry's reply brief failed to show that he preserved due process claims related to WIS. STAT. § 74.53, WIS. STAT. § 74.59, or any municipal ordinance.

Choudry alternatively argues that, by raising any claim of a due process violation in circuit court, he preserved every claim related to due process that he might now choose to present to this court. He is wrong. As we have explained in "countless" cases, we assess forfeiture by focusing on whether "particular arguments have been preserved, not on whether general issues were raised before the circuit court." ***Townsend v. Massey***, 2011 WI App 160, ¶25, 338 Wis. 2d 114, 808 N.W.2d 155. Accordingly, we decline to consider the alleged due process violations that Choudry seeks to raise for the first time on appeal.

We similarly decline to consider arguments disputing Choudry's "successor liability" for the distressed condition of the properties at issue in this case. Choudry appears to contend that the City, not Choudry, was responsible for the thousands of building code violations that rendered his properties a nuisance. The City acknowledges that Choudry raised the issue in circuit court but describes his abbreviated appellate argument on the issue as "cursory" and "undeveloped," and we agree. Choudry's appellate brief neither included this argument in the statement of issues, *see* WIS. STAT. RULE 809.19(1)(b), nor prefaced the argument with a summary statement, *see* RULE 809.19(1)(e), and the entirety of the argument does not appear to exceed two paragraphs. We do not consider issues that are insufficiently developed. ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995).

Moreover, the argument regarding "successor liability" is apparently premised on Choudry's allegations that he purchased his properties from the City and that it failed to disclose

defects in those properties prior to the sales. As the City explains, however, a substantial and detailed exhibit in the record shows that Choudry purchased the subject properties at sheriff's sales, and those sheriff's sales followed foreclosures on privately-held mortgages. Choudry does not direct our attention to any contrary information in the record. We normally do not consider arguments unsupported by record citations. ***Keplin v. Hardware Mut. Cas. Co.***, 24 Wis. 2d 319, 324, 129 N.W.2d 321 (1964). It is not this court's duty "to sift and glean" a voluminous record for facts that will support an appellant's argument. ***Id.***

Finally, we conclude that no compelling reasons exist to consider the issues that Choudry failed either to raise in the circuit court or to brief adequately on appeal. The familiar and fundamental rule of appellate review is "that issues must be preserved at the circuit court. Issues that are not preserved at the circuit court, even alleged constitutional errors, generally will not be considered on appeal." ***Huebner***, 235 Wis. 2d 486, ¶10. We apply the same rule to issues that are inadequately briefed in this court. ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 491-92, 588 N.W.2d 285 (Ct. App. 1998). Although we may decline to apply the rule "in exceptional cases," ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶17, 273 Wis. 2d 76, 681 N.W.2d 190, this is not an exceptional case.

The instant litigation does not raise novel legal issues of great importance, *see* ***Clean Wisconsin Inc. v. PSC***, 2005 WI 93, ¶271, 282 Wis. 2d 250, 700 N.W.2d 768, nor does Choudry show that it involves unique facts or circumstances. Rather, the litigation involves familiar disputes related to dilapidated properties and delinquent taxes. The matter was in litigation for six years, during which time the parties created an immense circuit court record that reflects ample opportunity to raise and resolve claims. Accordingly, we decline to entertain the issues that Choudry did not properly preserve or adequately present. Our approach promotes "the orderly

administration of justice," and encourages the efficient resolution of claims. ***Huebner***, 235 Wis. 2d 486, ¶11. For all the foregoing reasons, we affirm.

IT IS ORDERED that the circuit court order is summarily affirmed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals